No. 92-780

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

NATIONAL ORGANIZATION FOR WOMEN, INC., on behalf of itself and its women members and other women who use or may use the services of women's health centers that provide abortions; DELAWARE WOMEN'S HEALTH ORGANIZATIONS, INC.; and SUMMIT WOMEN'S HEALTH ORGANIZATION, INC., on behalf of themselves and all other similarly situated clinics,

Petitioners,

v.

JOSEPH SCHEIDLER, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE NATIONAL ABORTION FEDERATION AND PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*

The National Abortion Federation ("NAF") and Planned Parenthood Federation of America, Inc. ("PPFA") submit this brief in support of petitioners.[1] NAF, a not-for-profit professional association, was

[1] The parties have consented to the filing of this brief. Their letters of consent are being filed with the Clerk of the Court.

founded in 1977 and is composed primarily of clinics and physicians' offices providing reproductive health services, including abortion. Currently, NAF members include more than 300 abortion providers [2] operating in 46 states, the District of Columbia, Puerto Rico and Canada. NAF's primary objective is to unite providers of abortion services into a professional community dedicated to quality care. NAF provides professional standards, guidelines, training and education to its members and serves as a clearinghouse for information and advice to abortion service professionals and the general public.

PPFA, a not-for-profit corporation organized in 1922, is the leading national voluntary health organization in the field of family planning. Currently, PPFA has 165 affiliates in 49 states operating approximately 920 family-planning clinics. Forty-seven PPFA affiliates are also members of NAF. PPFA affiliates offer a wide range of services relating to reproductive health, including abortion. Sixty-three PPFA affiliates, operating 102 clinics, offer abortion services as part of their program.[3] All PPFA affiliates that do not provide abortion services themselves offer counseling and referral for such services.

NAF members and PPFA affiliates are the targets of the nationwide conspiracy of antiabortion violence and intimidation described in this case, and have suffered millions of dollars in damage to their business and property resulting from the activities of respondents. In addition, NAF's headquarters in Washington, D.C. were firebombed by self-professed antiabortion activists on July 4, 1984. Thus, *amici* have a special concern that the Court be fully informed about the harmful economic effects of respondents' unlawful activities, as this conduct more than

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[2] Fifteen applications for membership in NAF are currently pending.

[3] An additional 18 PPFA affiliates expect to offer abortion services by the end of 1993.

fulfills the requirement of injury to business or property as set forth in 18 U.S.C. § 1964(c).

STATEMENT OF FACTS

Amici curiae refer to the Statement of Facts set forth in the Brief for Petitioners filed with this Court.

SUMMARY OF ARGUMENT

The sole economic requirement of the civil RICO statute requires plaintiffs to allege injury to business or property. There is no dispute that petitioners have satisfied this requirement. Petitioners have alleged that respondents' pattern of extortionate activity has inflicted enormous damage on the business and property of abortion providers throughout the nation.

Over the past decade, respondents have engaged in a campaign of terror with the self-proclaimed purpose of shutting down clinics and physicians' offices that provide abortion services. A factual overview of this campaign shows a nationwide pattern of vandalism, harassment, violence and intimidation that has caused physicians to cease performing abortions and has wreaked millions of dollars in damage. This brief illustrates the shocking and unlawful behavior of the militant anti-abortion wing in 13 case studies of abortion providers who have suffered enormously at the hands of anti-abortion extremists.

ARGUMENT

I. RICO IS A BROAD REMEDY THAT CAN AND SHOULD BE AVAILABLE TO COMBAT THE VIOLENT AND INTIMIDATING TACTICS OF MILITANT ANTIABORTION EXTREMIST GROUPS

Nearly seven years ago, petitioners filed suit to combat the campaign of violence, destruction and intimidation that militant antiabortion groups have inflicted on abortion providers, their staff and their families. Notwithstanding its finding that respondents engaged in "reprehensible" activities,[4] the United States Court of Appeals for the Seventh Circuit held that the case must be dismissed under Fed. R. Civ. P. 12(b)(6) in part because petitioners did not allege that the RICO conspiracy was economically motivated.

In engrafting the pleading requirement of economic motive onto RICO, the Seventh Circuit failed to follow both the explicit direction of Congress and the teachings of this Court regarding the breadth and scope of RICO. When it enacted RICO, Congress stated that it should be "liberally construed to effectuate its remedial purposes." Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (1970), note following 18 U.S.C. § 1961. Time and time again, this Court has followed this directive and has consistently refused invitations to narrow RICO's scope. For example, in *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), the Second Circuit imposed two additional requirements on civil RICO plaintiffs in response to a perceived misuse of the statute: showing of a prior criminal conviction and a racketeering injury. *Id.* at 481. This Court reversed, explaining that "RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach, but also of its express admonition that RICO is to 'be liberally construed to effectuate its remedial purposes.'" *Id.* at 497-98 (citations omitted). *See also H.J. Inc. v.*

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[4] 968 F.2d at 621, 630.

Northwestern Bell Telephone Co., 492 U.S. 229, 235 (1989) (rejecting interpretation of "pattern of racketeering activity" as requiring proof of multiple schemes); *Russello v. United States*, 464 U.S. 16, 22 (1983) (rejecting argument that RICO forfeiture provision was limited to interests in an enterprise); *United States v. Turkette*, 452 U.S. 576, 587 (1981) (rejecting argument that RICO enterprise requirement be limited to legitimate enterprises only).

Nothing in the text of 18 U.S.C. § 1962(c) supports the pleading requirement added by the Seventh Circuit.[5] Instead, in pleading a violation of criminal RICO, the statute requires only that a RICO enterprise be engaged in or that its activities affect interstate or foreign commerce. *See* 18 U.S.C. § 1962(a), (b), (c). Under civil RICO, 18 U.S.C. § 1964(c), the plaintiff must also plead and prove that defendants' unlawful conduct injured her business or property. Petitioners have undisputedly satisfied these requirements.

II. ABORTION PROVIDERS HAVE SUFFERED VAST INJURY TO THEIR BUSINESS AND PROPERTY DUE TO RESPONDENTS' ACTIVITIES

Both NAF and PPFA include large numbers of providers throughout the nation who have been subject to the same sort of attacks, and indeed, in many cases, the very attacks, described in petitioners' Second Amended Complaint and RICO case statement.[6] Both organizations

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[5] Section 1962(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

[6] Although the District Court refused to certify the proposed class, the class in this case would properly include petitioner clinics and "all other similarly situated clinics performing abortions that

collect information from their members. NAF publishes its data in *Incidents Of Violence & Disruption Against Abortion Providers* and *Summary Of Extreme Violence Against Abortion Providers.*[7] The factual overview and individual case studies that follow more than justify the application of RICO to the extreme elements of the anti-abortion movement.

NAF received reports of 1,380 acts of violence against abortion providers,[8] 287 bomb threats and 581 clinic blockades between 1977 and July 21, 1993. Since the 1980's, these activities have intensified in severity and frequency. The 1990's have seen a dramatic increase in violence and terrorism. During the period from 1991 to mid-1993, 31 clinics providing abortion services were the targets of arson and 220 such clinics were vandalized.

In 1993, antiabortion extremists have relentlessly heightened the levels of violence and the accompanying damage, including threatening, stalking and even murdering[9] abortion providers in their campaign to coerce abortion providers to stop providing abortion services. In the first seven months of 1993 alone, antiabortion proponents made death threats to 56 abortion providers and stalked another 119. Some physicians have ceased to perform abortions and some clinic staff members have quit their

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[respondents] seek to drive out of business through a pattern of concerted unlawful activity." Thus, this class would include many members of NAF and PPFA.

[7] Copies of the current versions of these publications are being lodged with the Clerk of the Court.

[8] Acts of violence include murder, bombing, arson, attempted bombing and arson, invasion, vandalism, assault and battery, death threats, kidnapping, burglary and stalking. (Stalking is defined as the persistent following, threatening and harassing of an abortion provider, staff member or patient *away from* the clinic. NAF began tabulating stalking incidents in 1993.)

[9] In March 1993, Dr. David Gunn, a doctor at Pensacola Medical Services in Pensacola, Florida, died after an antiabortion extremist shot him three times in the back.

jobs out of fear for their safety and the safety of their homes and families due to the heightened violence.

Between January 1 and May 31, 1993, arson and vandalism caused an estimated $2,058,553 worth of property damage alone.[10] This figure does not include business revenue lost by clinics forced to suspend operations to repair damage, replace medical equipment or locate and move to replacement space, nor does it include the increased insurance costs suffered by these clinics [11] (and, in some instances, the clinics' landlords), the loss of income to clinic employees who have lost their jobs, legal fees and increased security costs to protect clinics from damage and their staff from intimidation.

These activities have had a profound impact on the livelihoods of abortion providers, their staff and their families. *Amici* have gathered a representative sampling of these episodes to demonstrate the far-reaching economic effects of respondents' violent and disruptive conduct.

A. Physicians

The following section describes four physicians who are victims of extortionate behavior typical of the pattern of racketeering activity alleged by petitioners. These case studies show that militant groups have driven or attempted to drive physicians out of business with the classic techniques of extortion: force, threats of force, fear and violence. Based on these tactics, which have been employed against physicians and members of their families, abortion providers have been deprived of "the right to make [their] business decisions free of threats and coer-

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[10] Between February and May 1993, antiabortion extremists burned five clinics and vandalized at least twelve with butyric acid.

[11] Due to the ongoing, publicized terrorist tactics of the antiabortion forces, many insurance companies consider clinics to be bad risks and therefore regularly refuse to insure them for the full value of their property and business.

cion." *United States v. Lewis*, 797 F.2d 358, 364 (7th Cir. 1986), *cert. denied*, 479 U.S. 1093 (1987); *see Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1350 (3d Cir.) (abortion clinic's intangible right to continue to operate its business sufficient to satisfy property right element of Hobbs Act, 18 U.S.C. § 1951, and RICO, 18 U.S.C. § 1961(1)(B)), *cert. denied*, 493 U.S. 901 (1989). As these case studies show, some physicians have succumbed to the pressure and have ceased to perform abortions.

1. *Dr. Susan Wicklund—Fargo, North Dakota; Bozeman, Montana*

Dr. Susan Wicklund, who began performing abortions in 1988, traverses the upper northern regions of this country in order to provide abortion services to her patients. In 1989, she began practicing at the Fargo Women's Health Organization (the "Fargo Clinic")—the only clinic in all of North Dakota that includes first trimester abortions among the wide range of reproductive health care services it offers. Dr. Wicklund alternates with another physician weekly in performing abortions on the two days that the clinic sets aside for the procedures. On other days, she provides gynecological services, including abortions, to clients of the Mountain Country Women's Clinic in Bozeman, Montana.

The price of continuing such a practice, in the face of an ever-increasing shortage of physicians willing to provide abortion services, is high. The tactics of the anti-abortion terrorists have forced Dr. Wicklund to purchase a .38 caliber revolver and a bullet-proof vest. She is escorted in and out of clinics by a personal security guard. She is the frequent target of death threats and stalking.

Moreover, in the summer of 1992, when Dr. Wicklund was performing abortions at the Summit Women's Health Organization in Milwaukee, Wisconsin, she was violently

attacked. As members of the antiabortion organization Missionaries to the Preborn demonstrated outside the clinic, Dr. Wicklund attempted to enter through the back door. She was grabbed by a protester, thrown against a van and told, "we're going to stop you—no matter what." Despite her struggle, Dr. Wicklund was unable to escape from her captor and clinic personnel rushed to her aid. Before they could gain her release, however, a virtual tug of war ensued between the protesters and the staff, with Dr. Wicklund as the pivot point. Dr. Wicklund worked that day and those immediately following with multiple bruises.

In Fargo, members of the Lambs of Christ have so heightened the level of intimidation and harassment against Dr. Wicklund as to warrant an injunction against their alleged criminal and tortious acts. *Fargo Women's Health Organization, Inc. v. Lambs of Christ,* 488 N.W.2d 401 (N.D. 1992). Even though the injunction requires the protesters to remain at least 100 feet from the clinic, Dr. Wicklund never feels safe in Fargo and she never stays overnight. For a three-month period, she received phone calls and letters daily advising her of her imminent death. Dr. Wicklund has no doubt that certain members of the antiabortion movement are conspiring to stalk and frighten her: for the duration of a year, a group of extremists would harass her when she boarded a plane to travel to Fargo, or elsewhere. When her plane would land in another state, 250 miles away, a different group of screaming protesters would greet her at the gate. These activities occurred even if she took odd flights in order to confuse her pursuers. Currently, she is trailed in her car by persons who communicate by walkie-talkies. Although one antiabortion activist has been charged and convicted for stalking her in Fargo, that case is on appeal and Dr. Wicklund still worries for her life.

In January 1993, Dr. Wicklund bought the gynecological practice of Dr. Francis Balice in Bozeman, Montana.

He, too, had been threatened frequently by antiabortion zealots who claimed they would kill him and put him out of business. However, Dr. Balice, who was nearing retirement, was determined to continue his practice for at least another three years rather than cave in to the harassment and intimidation tactics of the militants. When Dr. Wicklund offered to buy the clinic, Dr. Balice was pleased to turn over his business to her. Nevertheless, the threats against the clinic did not stop with the arrival of a new physician.

Dr. Wicklund receives letters daily, sometimes twice a day, at the Mountain Country Women's Clinic threatening either to burn down the clinic or to take her life. In her second week of operation, she received a letter from a Missouri antiabortion activist who wrote "my mission is to shut you down and to make sure you will never do abortions." After the murder of Dr. Gunn in Pensacola, Florida, the tone of the letters became even more graphic and threatening. At least one letter, dated March 11, 1993, threatened to tear her limb from limb just like the "babies" she was "murdering": "How would you like to have your legs ripped off one by one? How about your arms, one by one? How would you like to have your skull crushed? It should happen to *you.*"

Dr. Wicklund's home has been burglarized twice since she began the Bozeman practice. The perpetrators did not take anything either time and Dr. Wicklund believes they intended to highlight her vulnerability, even in her residence. While she lives with the constant fear that her life will be taken or her family harmed, Dr. Wicklund vows to continue providing safe and legal abortions to women who seek them.

2. *Dr. Abraham Anderson—Norfolk, Virginia*

Dr. Abraham Anderson is an OB/GYN who has practiced in Norfolk, Virginia since 1971. He practices out

of three offices, one in Norfolk and two in Chesapeake. Abortions comprised less than two percent (2%) of Dr. Anderson's practice. Dr. Anderson was the only physician in the Norfolk area who performed abortions for Medicaid patients at a reduced fee, or for no fee whatsoever.

After frequent episodes of residential picketing, Dr. Anderson began to receive letters threatening to post "Wanted" posters bearing his picture around his neighborhood and near his office unless he signed an agreement that he would no longer perform abortions. One such letter threatened to "make it impossible for [him] to practice."

Following months of harassment, Dr. Anderson sued Donald Spitz and the local Operation Rescue organization. Approximately two weeks after obtaining a restraining order, Dr. Anderson began to receive threatening cards and letters from other states, including Texas, and from countries in Europe, many of which contained similar or identical handwriting, indicating that the same person or persons were writing the cards and letters, and either mailing the letters themselves or recruiting other people to mail them from other locations. Additionally, local antiabortion forces began to place "Wanted" posters on telephone poles on the street leading to Dr. Anderson's office. The propaganda posted and issued by the antiabortion forces misrepresented Dr. Anderson as only performing abortions, when in reality abortions comprised a very small part of his practice.

The harassment of Dr. Anderson increased dramatically in the past year. On three occasions, at two-week intervals, antiabortion activists littered his driveway with nails at night. On another occasion, they broke down a side gate leading to his yard and pushed in the storm windows at the back of his house. Additionally, another militant and an accomplice began to stalk Dr. Anderson. In response to these events, local police forces increased surveillance around Dr. Anderson's house. This increased surveillance failed, however, to deter Dr. Anderson's harassers.

Dr. Anderson is the father of a fourteen-year-old daughter who, due to his work schedule, is often home alone at night. Dr. Anderson became increasingly frightened by the harassment and intimidation, especially because he felt that the local Operation Rescue organization was actively recruiting unstable people who might go so far as to kill him. Fearing for his own safety and that of his daughter, Dr. Anderson decided to cease performing abortions.

3. *Dr. Clay Alexander—Dallas, Texas*

Dr. Clay Alexander began performing abortions as part of his private gynecological practice in Dallas, Texas in 1987. Beginning in June 1992, members of the Dallas Pro-Life Action Network ("Dallas PLAN") targeted Dr. Alexander for a harassment campaign. After seven weeks of concentrated harassment and intimidation, Dr. Alexander considered the toll taken on his wife and children and reluctantly signed a "no-abortions" pledge.

In order to obtain Dr. Alexander's surrender, Dallas PLAN established daily pickets outside his office, the hospital with which he is affiliated and his home,[12] and began telephoning him at all hours of the day and night, demanding that he stop performing abortions. Letters and postcards angrily calling for his retirement from abortion practice filled his mailbox each day. Dallas PLAN members would pepper his residential block with pamphlets depicting mutilated third trimester fetuses. On one occasion, the extremists littered his lawn with white crosses to simulate a cemetery. Dallas PLAN members also stalked Dr. Alexander's wife on her daily errands, following her into each business, from the dry cleaner to the video store, and demanding of the proprietor, "don't serve the wife of a baby killer!"

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[12] *See* Steve Blow, *Abortion Foes Moving Down List of Doctors*, Dallas Morning News, Oct. 9, 1992, at 31A.

In the middle of July 1992, Dr. Alexander phoned Tom Cyr, the director of Dallas PLAN, and asked what he must do to make the harassment stop. Cyr informed him that his life would return to normal if he signed a pledge promising never again to perform abortions. In addition, Cyr instructed Dr. Alexander to turn over a passport-quality photo of himself which could be disseminated to Dallas PLAN members. In this way, explained Cyr, the group could be certain of Dr. Alexander's identity and "if we ever see you anywhere near an abortion clinic, we'll start up all over again. We'll hound you to the ends of the earth and make your life a living hell."

Since Dr. Alexander signed the pledge, Dallas PLAN has publicized his case and has targeted other doctors in the area, with some success.[13] Dr. Alexander is distressed when he informs a woman that although an abortion is a medical necessity, he is constrained from performing the procedure. He states that he would never have signed the pledge if he were a single man; however, as a husband and father of one- and three-year-old children, Dr. Alexander is afraid of exposing his family to increasingly violent harassment.

4. *Dr. Smith* [14]

Dr. Smith has been an OB/GYN in California for 22 years. He is a solo practitioner who, from 1979 to 1992, performed abortions as part of his OB/GYN practice. The provision of abortion services constituted only one to five percent (1-5%) of Dr. Smith's practice. In 1992, however, in order to save his family from further harassment by antiabortion forces, Dr. Smith reluctantly signed a pledge that "[he] will not perform abortions anymore."

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[13] *See id.*

[14] At the request of the physician, his name has been changed to protect him from retaliation from antiabortion groups.

The events leading up to Dr. Smith's signing of the pledge included an invasion of his office by more than 100 demonstrators who vowed to destroy him. Anti-abortion extremists also harassed his family and threatened to deliver pamphlets labeling him a "baby killer" to the elementary school attended by his eight-year-old son. When Dr. Smith's wife could no longer tolerate the strain and pressure of this harassment, she threatened to leave him if he did not accede to the harassers' demands.

Dr. Smith sought help from the local sheriff, who invited Dr. Smith to bring his complaint to the sheriff's office. When Dr. Smith arrived, however, he found one of his harassers in the sheriff's office. The sheriff proposed to "mediate" the conflict between Dr. Smith and the anti-abortion forces. Under pressure, Dr. Smith, realizing that he would receive no assistance from the local law enforcement, reluctantly signed the pledge and delivered it to the harasser in the sheriff's office. Although anti-abortion demonstrators no longer threaten Dr. Smith, they monitor his office to check whether he is keeping his pledge.

B. Arson

1. *The Pacific Northwest*

Between February and May 1993, antiabortion zealots burned three clinics located in the northwest United States. Each of these arsons followed a similar pattern: late at night, typically between 2:00 and 4:00 a.m., the arsonists sprayed the clinic with gasoline (or a similar flammable substance) and set fire to the building. Due to different structural characteristics of the buildings which housed these clinics, however, they did not suffer equivalent amounts of damage.

a. *Blue Mountain Clinic—Missoula, Montana*

The Blue Mountain Clinic ("Blue Mountain"), which opened in Missoula, Montana in 1977, was the first clinic

in Montana to perform abortions. Abortion services, however, comprised less than twenty percent (20%) of its business. The majority of Blue Mountain's business derived from other health care services, including prenatal and pediatric care. Blue Mountain was one of only three facilities in the region to provide prenatal care to Medicaid patients. Additionally, Blue Mountain had an exclusive Department of Health contract to perform childhood immunizations. Blue Mountain's clientele came from a 300-mile radius which encompassed western Montana, northern Idaho, eastern Washington and parts of western Canada. Blue Mountain's regular clients (*i.e.*, patients seen on a regular basis for health care other than abortion services) numbered more than 5,000 in 1992.

Blue Mountain had been subjected to ongoing harassment by antiabortion activists over a period of several years, including two "rescues" by Operation Rescue in the past three years and death threats made to Blue Mountain's former director.[15] On March 29, 1993, antiabortion arsonists saturated the roof and eaves of Blue Mountain with a flammable accelerant and threw an incendiary device inside the building. The fire alarm went off at approximately 3:56 a.m. Although firefighters and police arrived on the scene within three minutes, Blue Mountain was completely destroyed. The police have not apprehended the arsonists and do not even have a suspect.

The arson of Blue Mountain caused at least $250,000 in property damage alone, not including the cost of the building which Blue Mountain leased from the owner of the complex.[16] Blue Mountain has also lost approxi-

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[15] A previous director of Blue Mountain and an OB/GYN in Bozeman, Montana both received death threats from the same identified antiabortion zealot.

[16] Another building in the complex suffered extensive smoke damage that forced the tenant to move. Thus, the arson of Blue Moun-

mately $50,000 per month in revenue since the arson. Blue Mountain's insurance covered only a portion of these losses—its business loss insurance covered only the first two months following the arson, and its property insurance covered less than half of the property loss.

The economic effects of the destruction of Blue Mountain reach beyond property and revenue loss. Montana is a rural area hard hit by the recession. Blue Mountain formerly employed 38 people, but since the arson it maintains a skeletal staff of eight. If Blue Mountain cannot raise the money to rebuild, these eight people will also lose their jobs.

Blue Mountain has not performed an abortion since the arson and, other than quietly leasing a small amount of space from a local physician to provide some health care services for less than half of its regular patients, has been unable to reopen.

b. *Women's Health Care—Boise, Idaho*

Women's Health Care ("Health Care"), which opened in Boise, Idaho in 1981, was primarily established to allow nurse practitioners to provide contraceptive and general gynecological care. Health Care initially did not perform abortions, but added the service in late 1981-early 1982 due to patient demand. Health Care's patients are mostly women, but it also provides general health care to some men and children. Health Care serves approximately 500 patients per month, 30-35 of whom seek abortion services.

On May 28, 1993, at approximately 3:00 a.m., unidentified antiabortion activists broke a window in Health

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tain inflicted business and property damage not only on the clinic, but also on the owner of the business complex, who suffered the loss of two tenants, one destroyed building and one damaged building, and another tenant who incurred property damage and moving costs.

Care, doused the waiting room, ramp and roof with gasoline and set the building on fire. Health Care's waiting room, as well as most of its records, were destroyed in the fire. The failure of Health Care's stucco roof to ignite, however, saved the building from total destruction. Health Care estimates the damage at more than $100,000. The police found a gasoline can at the scene, but otherwise have no evidence and no leads.

Approximately one week later, Health Care located a smaller, temporary space, but the lease for this space expires at the end of August 1993 and renewal is uncertain. Health Care has suffered a forty percent (40%) drop in its business since the arson, in large part because it does not have the facilities to serve more patients, and currently provides health care services only to those who require immediate care. Given the increased visibility of its current space, Health Care fears that greater numbers of protesters and intensified harassment will frighten other patients away.

c. *Bours Health Center—Forest Grove, Oregon*

Dr. Peter Bours began his family practice in 1975. In 1979, he constructed the building which houses the Bours Health Center in Forest Grove, Oregon (the "Center"). In recent years, Dr. Bours has begun concentrating primarily on family planning. He provides abortion services for approximately 200 patients per year.

At 2:15 a.m. on May 13, 1993, the fire alarm at the Center sounded. Much like the arsons at Blue Mountain and Health Care, arsonists sprayed the roof and eaves of the Center with gasoline and ignited the building. The Center suffered approximately $5,000 in property damage. Were it not for the prompt response of the fire department and certain structural characteristics of the building, including a lack of attic space between the roof and the ceiling, the Center would have suffered much greater damage. The police have no suspects.

2. *Reproductive Services/Adoption Affiliates—Corpus Christi, Texas*

Reproductive Services/Adoption Affiliates ("Services/Affiliates") are affiliated not-for-profit organizations. Services owns and operates several non-profit family-planning clinics in the southwest United States that provide educational programs to schools and community groups on birth control and other sexuality issues, and also provide a range of family-planning and gynecological services, including abortion. Affiliates is an associate organization that provides adoption services to women, including medical treatment and both pre- and post-adoption counseling. In each of their clinics, Services/Affiliates share office space and personnel.

The Services/Affiliates clinic in Corpus Christi, Texas (the "Corpus Clinic") opened in 1978. The former building of the Corpus Clinic housed both a medical, family-planning clinic and an adoption services center. The sign on the building carried the names of both organizations. The Corpus Clinic serves approximately 35-40 patients a week, approximately 20-25 of whom seek abortion services or information on abortion services. It also provides medical treatment and counseling to many birth mothers. The Corpus Clinic's clients range widely in age and come from a broad base of circumstances.

Until February 1993, the Corpus Clinic was housed in a freestanding building located in a multi-business complex. In the early morning of February 15, 1993, arsonists axed or kicked in the front door of the Corpus Clinic and threw an incendiary device into the building, which set the Corpus Clinic on fire. The building was completely destroyed at a loss of more than $1,000,000.[17] The Corpus Christi police never apprehended the arsonists. The

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[17] *See* Lisa Richwine, *Women's Group Offers $20,000 Reward for Bombing of Texas Clinic*, States News Service, Mar. 5, 1993 ("States News").

Corpus Clinic was closed for over two months, but reopened in late spring at another location.

C. Other Vandalism, Property Damage And Economic Injury

1. *Planned Parenthood of San Diego and Riverside Counties—California* [18]

On March 9 and in the early morning hours of March 10, 1993, antiabortion vandals sprayed six abortion clinics in San Diego and Riverside Counties with butyric acid.[19] The most extensive damage by far occurred at the Planned Parenthood Clinic in Riverside (the "Riverside Center").

The Riverside Center, which had been the subject of an arson attack in 1988, had just been renovated when the acid vandals hit. They apparently drilled a ⅛″ hole, about the size of a straw, in a window sash and pumped the acid in with a syringe.

A cleaning woman at the clinic discovered the damage first. When she entered the building, a noxious odor that smelled like a combination of manure and vomit overwhelmed her. Her skin felt hot, as if it were burning, and she could not breathe easily. Nauseated and unable to remain in the building, the employee sought treatment at an urgent care clinic. Her face and eyes burned for a long time afterward as if she had been badly sunburned.[20]

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[18] Planned Parenthood of San Diego and Riverside Counties ("Planned Parenthood of San Diego") operates twelve clinics, eleven of which are family-planning clinics and one of which provides prenatal services.

[19] All of these attacks closely preceded Dr. Gunn's murder in Pensacola, Florida on March 10, 1993.

[20] This was not the only medical consequence of the acid attack. One staffer who had been nursing her baby and had planned to continue for another six months was forced to stop after being exposed to the fumes. The local poison control center could not advise her as to the safety of her breast milk and her infant vomited after each nursing. Other staffers state that they reeked with

When the rest of the staff arrived within the hour, the noxious odor forced them to cover their mouths and close their eyes while they opened all the windows and doors. The smell did not dissipate with the influx of fresh air and, indeed, could be detected within a three-block radius of the Riverside Center. Recognizing that they could not deliver health care services in such an environment, the staff brought the telephones out through the windows, grabbed charts from files and rescheduled the day's appointments. For the walk-in clients who could not be forewarned, the staff dispensed birth control supplies and provided the most basic of services from the patio.

For the next two days, several contractors tried without success to rid the building of the odor. By March 12, two days after the attack, the staff concluded that their workplace was uninhabitable and decided to relocate. The relocation lasted five weeks, until an effective neutralizer could be found. Even then, the Riverside Center could not salvage the furniture.

The Riverside Center is once again in full operation. However, the cost of recovery has exceeded $90,000. The Riverside Center spent $35,000 in cleaning, replacing the carpet, hiring a security guard and relocating. It also lost $30,500 in income, invested $12,500 in a newly-installed perimeter security system, allotted $8,000 for security at Planned Parenthood of San Diego's administration building and two other clinics and has committed an additional $6,000 toward apprehending the vandals.

2. *The Women's Pavilion—South Bend, Indiana*

The Women's Pavilion (the "Pavilion"), a family-planning clinic located in South Bend, Indiana that provides a broad spectrum of OB/GYN services including abortion, opened in 1978. The Pavilion provides abortion services

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the odor of butyric acid when they returned home from the clinic. They found it necessary to discard their clothes in garages and patios before entering their homes and immediately to shower and wash their hair.

to approximately 20-30 patients per week. Due to its location in an area with three colleges, the Pavilion sees predominantly college-age, middle-class women, but draws patients from all walks of life.

In early May 1993, Peter Heers from Collegians Activated to Liberate Life ("CALL") contacted a local radio station, WVPE, to announce that CALL would be outside the Pavilion on the Friday before Mother's Day [21] distributing white carnations to "mothers" who had aborted their pregnancies. On May 7, 1993, approximately 25-30 protesters from CALL, primarily men, gathered in the parking lot of the Pavilion, harassed patients and staff and handed white carnations to patients entering and leaving the Pavilion.

Sometime on the night of Saturday, May 8, 1993, or early morning of Sunday, May 9, 1993 (Mother's Day), antiabortion vandals axed through a boarded-up mail slot on the front door of the Pavilion and air-compressed a powder form of butyric acid or a substantially similar substance [22] into the Pavilion. The vandals ran a hose from a spigot on the front of the Pavilion through the hole in the door and flooded the Pavilion.[23] Additionally, they drilled a hole in the back door and forced more butyric acid into the back rooms of the Pavilion, most likely by using syringes. There is no spigot at the back of the Pavilion and, therefore, they were unable to flood the Pavilion through the back door as well. Although the perpetrators have yet to be identified, they left a partially-full butyric acid bottle and several white carnations on the front steps of the Pavilion.

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[21] The Pavilion is not open on Saturdays.

[22] The Pavilion has yet to receive official confirmation that the substance used was butyric acid.

[23] *See Abortion Clinic Seeks Federal Investigation Following Acid Attack*, UPI, May 10, 1993, *available in* LEXIS, Nexis Library, Wires File.

An escort from the National Organization for Women who was patrolling the area around the Pavilion noticed the hose running in the front door on Sunday, May 9, and called the police. Because neither the police nor the fire department in South Bend possesses the technology to identify the exact chemicals used to vandalize the Pavilion, they sent the bottle left on the front steps and other samples to the FBI Crime Lab.

The Pavilion was closed for approximately six weeks to repair the damage and to air out the rooms, at a loss of approximately $45,000-60,000 in revenue. The damage has run into hundreds of thousands of dollars. The administrators were forced to replace the carpets, baseboards and internal doors, as well as most of the wallpaper. They also replaced the front and back doors, which the vandals damaged in the break-in, and repainted the ceilings. The Pavilion's insurance company has reimbursed the Pavilion for some of the damage, but recently has balked at paying further, questioning whether the Pavilion is a "legitimate business" and using other delay tactics.

3. *Reproductive Services/Adoption Affiliates—San Antonio, Texas*

The Services/Affiliates clinic in San Antonio, Texas (the "San Antonio Clinic"), a non-profit medical, family-planning and counseling clinic, opened on March 6, 1973. It was the first non-profit clinic to provide abortion services in the southwest United States (which has made it a particular target of the antiabortion forces in that region). Slightly larger than the Corpus Clinic, the San Antonio Clinic serves approximately 45 patients per week, approximately 25-29 of whom seek abortion services.

Late on the night of January 24, 1993, two days after President Clinton signed and issued the "Memorandum on Fetal Tissue Transplantation Research" and the "Memorandum on the Title X 'Gag Rule,' " unidentified antiabortion vandals drilled 27 holes in the roof and poured butyric acid into the San Antonio Clinic. The butyric

acid rendered the San Antonio Clinic uninhabitable for at least four days, made many employees ill [24] and caused thousands of dollars worth of damage. In addition to damaging the interior of the San Antonio Clinic, butyric acid also seeped into the insulation of the building, which had to be torn out and replaced. The police have not caught the vandals.

4. *Florida Women's Medical Clinic—Oakland Park, Florida*

The Florida Women's Medical Clinic in Oakland Park, Florida (the "Florida Clinic") has been housed in a multi-tenant office building since 1976. The Florida Clinic serves a range of patients, from middle-income women to Haitian and other refugees. It also provides prenatal and other services for the Department of Health. The Florida Clinic has tried to set its fees as low as possible because it is the only option for many lower-income women.

Over the past four years, beginning in 1989, anti-abortion activists shot out five plate-glass windows at the Florida Clinic, dumped motor oil on the front doors, strewed nails in the parking lot and super-glued the locks, causing an estimated $7,000 worth of property damage. Two physicians quit working at the Florida Clinic due to the harassment.[25]

The Florida Clinic's lease expires at the end of August 1993. The landlord has decided not to renew the lease because, due to the harassment and damage, he cannot attract other tenants to the building and is losing money. The clinic's move to its new site will cost $26,000.

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[24] *See* States News, *supra* note 17.

[25] One physician ceased performing abortions altogether; the other is now working at a clinic which has not been harassed.

5. *Clinic "X"* [26]

Clinic X, which provides OB/GYN services, including abortion services, to a primarily inner-city, indigent clientele that comes from a several-hundred-mile radius, opened in 1983. Approximately fifty to sixty percent (50-60%) of Clinic X's patients are Medicaid patients. Clinic X is located in a region with the highest rate of teenage pregnancy in the state.

During a two-week period in 1992, Operation Rescue targeted Clinic X and the other clinics in the city with massive blockades, invasions and increased harassment of staff and patients. Although Clinic X regularly sees approximately 100 patients per week, during this period Clinic X saw only 19 patients the first week and 35 patients the second week. Many patients who canceled or rescheduled appointments explained that they were afraid of the blockaders. This drop of sixty-five to eighty percent (65-80%) cost Clinic X more than $38,000 in lost revenues.[27]

One staff member of Clinic X quit just prior to the commencement of the two-week period because she feared harassment. Two other staff members did not come to work during those two weeks, citing fear for their personal safety if they attempted to enter the clinic.

CONCLUSION

The foregoing case studies, while not an exhaustive review, illustrate the illegal activities of a radical fringe of the antiabortion movement. This fringe is, in fact, a well-funded enterprise that is national in scope. The enterprise is both violent and intimidating; it regularly conspires to engage in acts of extortion, arson, vandalism

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[26] The name and location of Clinic X have been kept confidential at the request of the clinic administrator.

[27] This figure does not include legal fees.

and assault and it regularly succeeds in its aims. There is no question that the enterprise seeks to harm, and does harm, abortion providers in their business and property. Indeed, it has defined and declared its intent to "interfere with and even stop the business of abortion." Joseph Scheidler, *Closed: 99 Ways to Stop Abortion* 18 (1985). Having established a systematic method of attacking abortion clinics, the enterprise is now also targeting the abortion-providing physician or, in the words of Operation Rescue's Randall Terry: "the weak link." *See* Sandra G. Boodman, *Abortion Foes Strike At Doctors' Home Lives; Illegal Intimidation or Protected Protest?*, Wash. Post, Apr. 8, 1993, at A1.

The enterprise has no respect for the law. *See, e.g., Northeast Women's Center, Inc. v. McMonagle*, 745 F. Supp. 1082, 1094 (E.D. Pa.), *modified*, 749 F. Supp. 695 (E.D. Pa. 1990). Its flagrant disregard of court orders has resulted in numerous findings of contempt for Operation Rescue participants. *See, e.g., Roe v. Operation Rescue*, 919 F.2d 857 (3d Cir. 1990); *New York State NOW v. Terry*, 886 F.2d 1339 (2d Cir. 1989), *cert. denied*, 495 U.S. 947 (1990); *NOW v. Operation Rescue*, 747 F. Supp. 772 (D.D.C. 1990). It threatens to spin completely out of control if tighter reins are not applied. Accordingly, *amici* urge this Court to find that the "reprehensible activities" of the enterprise are completely within the ambit of civil RICO and that economic motive has no place in the proper statutory construction of RICO.

For the foregoing reasons, this Court should reverse the decision below of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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